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21 *Attorneys for Defendant Nature's Bakery, LLC*

22 UNITED STATES DISTRICT COURT

23 DISTRICT OF NEVADA

24 TURKIYE IHRACAT KREDI BANKASI,  
25 A.S.,

26 Case No. 3:20-cv-00330-LRH-CLB

27 **NATURE'S BAKERY'S APPLICATION  
28 FOR FEES PURSUANT TO ECF NO. 104**

vs.

NATURE'S BAKERY, LLC F/K/A BELLA  
FOUR BAKERY, INC.,

Defendant.

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NATURE'S BAKERY, LLC,

Third-Party Plaintiff,

vs.

INTRANSIA, LLC,

1  
2                   Third-Party  
3                   Defendants.  
4

5                   INTRANIA, LLC,  
6

7                   Counterclaimant,  
8                   vs.  
9

10                  NATURE'S BAKERY, LLC F/K/A BELLA  
11                  FOUR BAKERY, INC.,  
12

13                  Counterdefendant.  
14

15                  Third-Party Plaintiff Nature's Bakery LLC ("Nature's Bakery") respectfully submits this  
16 application pursuant to the Court's October 29, 2021 Order (ECF No. 104) granting Nature's  
17 Bakery attorney's fees and costs associated with bringing its Motion for Sanctions and Reply.

18                  This application is supported by the Declarations of David Kwasniewski and Justin J.  
19 Bustos identified as **Exhibits 1 and 2** and all exhibits thereto, and all papers and pleadings on file  
20 herein.

21 **I. INTRODUCTION**

22                  As set forth in Nature's Bakery's Motion for Sanctions (ECF No. 81) and the Court's Order  
23 granting that motion, Plaintiff, without justification, failed to appear for its duly noticed deposition  
24 on May 12, 2021. Nature's Bakery repeatedly attempted to cooperate with Plaintiff regarding the  
25 scheduling of Plaintiff's deposition beginning in April 2021, and even offered to hold Plaintiff's  
26 deposition after the close of discovery in May 2021, all to no avail. Thereafter, Plaintiff moved for  
summary judgment (ECF No. 71) against Nature's Bakery based largely on the self-serving  
declaration of one of Plaintiff's employees whom Plaintiff's prevented Nature's Bakery from  
deposing.

27                  As a direct result of Plaintiff's discovery misconduct Nature's Bakery was forced to expend  
28 significant attorney's fees on numerous motions that would not have been necessary had Plaintiff's  
produced its corporate representative for deposition as required under the Federal Rules.

- 1      • Nature's Bakery opposed Plaintiff's summary judgment motion (ECF No. 80) and  
2      moved for sanctions for Plaintiff's failure to make its witness available for deposition.  
3      (the "Motion for Sanctions", ECF No. 81.)  
4      • Plaintiff then created even more of an uneven playing field by filing a 39-page "joint"  
5      brief (ECF No. 90) opposing Nature's Bakery's Motion for Sanctions and replying to  
6      Nature's Bakery's summary judgment opposition, which introduced extensive new  
7      arguments and evidence not previously addressed.  
8      • This required Nature's Bakery to file a motion to strike (the "Motion to Strike") and a  
9      sur-reply to Plaintiff's submission (the "Sur-Reply") (ECF Nos. 97, 97-1) in addition  
10     to its Reply in support of its Motion for Sanctions (ECF No. 96).  
11     • Plaintiff opposed the Motion to Strike, and Nature's Bakery filed a reply in support of  
12     its Motion to Strike as well (ECF No. 100.)

13     On October 29, 2021, the Court granted Nature's Bakery's Motion for Sanctions, noting  
14     that Plaintiff "failed to be cooperative, practical, or sensible" and its behavior "reflects a  
15     fundamental lack of compliance with the discovery process" which warranted sanctions "for the  
16     prejudice [Nature's Bakery] has suffered and to encourage Turk Eximbank to comply with its  
17     discovery obligations going forward." (Order at 11, 13). Because Plaintiff's discovery misconduct  
18     forced Nature's Bakery to engage in extensive motion practice which could otherwise have been  
19     avoided, Nature's Bakery should be compensated for all of the fees and costs it was forced to incur.

20     See *Dang v. Cross*, 422 F.2d 800, 813 (9th Cir. 2005) (where fees awarded in connection with one  
21     successful claim, it was error for district court to not review fees incurred on other related claims).  
22     Accordingly, with this application Nature's Bakery seeks (1) all of the fees and costs it incurred in  
23     connection with its initial efforts to schedule Plaintiff's deposition; (2) all of the fees Nature's  
24     Bakery incurred to file the Motion for Sanctions; (3) 50% of the fees incurred in filing the Motion  
25     to Strike, which was also necessitated in part due to Plaintiff's discovery misconduct; and (4) 25%  
26     of the fees incurred in filing the Sur-Reply, which likewise was necessitated in part by Plaintiff's

1 discovery misconduct; and (5) all of the fees incurred by Nature's Bakery in preparing the instant  
2 fee application.

3 **II. BRAUNHAGEY & BORDEN LLP'S HOURLY RATES ARE REASONABLE**

4 BraunHagey & Borden LLP ("BHB") is a 30-lawyer boutique headquartered in San  
5 Francisco that routinely handles high profile, complex litigation involving antitrust, unfair  
6 competition, and other commercial matters. (Declaration of David Kwasniewski ("Kwasniewski  
7 Decl.") ¶ 2.) BHB regularly appears before federal and state courts throughout the country to  
8 prosecute and defend claims involving a variety of business issues. (*Id.*) BHB's clients run from  
9 Fortune 500 Companies to small businesses and encompass many different types of industries.  
10 (*Id.*) BHB has successfully litigated and arbitrated disputes exceeding many billions of dollars.  
11 (*Id.*)

12 BHB's hourly rates are reasonable. They are the actual rates paid by Nature's Bakery.  
13 (Kwasniewski Decl. ¶ 4.) They are the same as the rates paid by BHB's other clients. (*Id.*)  
14 BHB's hourly rates are far less than those charged by the big firms where counsel previously  
15 practiced and those charged by attorneys in the community of like experience, skill, and  
16 reputation. (*Id.* ¶ 6.) BHB's rates have been approved by the Ninth Circuit Court of Appeals in  
17 awarding sanctions under Federal Rule of Appellate Procedure 38. *See Walker v. B&G Foods,*  
18 *Inc., et al.*, Case No. 16-15349 (9th Cir., Jul. 20, 2017), Dkt. No. 26. (Kwasniewski Decl. ¶ 4.)  
19 BHB's rates have been approved by district courts in awarding discovery sanctions, *see Hill v.*  
20 *Robert's Am. Gourmet Food, Inc.*, No. C 13-80166 EDL (N.D. Cal.), Dkt. No. 17, and in awarding  
21 Rule 11 sanctions. *See Hunt v. Sunny Delight Beverages Co.*, 18-cv-00557-JLS-DFM (C.D. Cal.),  
22 Dkt. No. 69. (Kwasniewski Decl. ¶ 4.) They have also been approved in impact litigation before  
23 California State Courts. *See Davis v. AG Seal Beach, LLC, et al.*, Case No. BC468346 (Los  
24 Angeles Super. Ct.), and *State of Cal. ex rel. Todd Dominguez v. En Pointe Techs. Inc., et al.*,  
25 Case No. 37-2011-00100936-CU-BTL (San Diego Super. Ct.). (Kwasniewski Decl. ¶¶ 3-4.)

26     ///

27     ///

1           **III. THE HOURS BHB EXPENDED ARE REASONABLE**

2           As set forth above, Nature's Bakery seeks to recover its fees and costs reasonably incurred  
3 in connection with (1) its initial efforts to schedule Plaintiff's deposition, (2) the Motion for  
4 Sanctions, (3) the Motion to Strike, and (4) the Sur-Reply, and (5) the instant fee application.  
5 Because the Motion to Strike and Sur-Reply were only partly necessitated by Plaintiff's discovery  
6 misconduct, Nature's Bakery seeks only 50% and 25%, respectively, of the fees incurred in  
7 connection with those filings.

8           **A. Fees Incurred to Schedule Plaintiff's Deposition**

9           Nature's Bakery seeks to recover for 1.6 efficient billable hours of attorney time and 2.9  
10 efficient billable hours of paralegal time in connection with its efforts to schedule Plaintiff's  
11 deposition in April and May of 2021. This consists of:

- 12           • **1.6** hours billed by David Kwasniewski in drafting correspondence with Plaintiff's  
13           counsel regarding deposition scheduling; and drafting and serving a notice of  
14           deposition;
- 15           • **2.9** hours billed by Cameron Baker, a BHB paralegal for coordinating for a court  
16           reporter for the deposition;

17           In total, Nature's Bakery incurred \$1,674.50 in fees in connection with its efforts to schedule  
18 Plaintiff's deposition. Nature's Bakery also incurred a cost of \$756.15 in connection with  
19 reserving a court reporter for May 12, 2021.

20           **B. Fees Incurred Related to the Motion for Sanctions**

21           Nature's Bakery seeks to recover for 73.8 efficient billable hours of attorney time and 2.3  
22 efficient billable hours of paralegal time in connection with its filing of the Motion for Sanctions.  
23 This consists of:

- 24           • 38.8 hours billed by David Kwasniewski in researching and drafting the motion and  
25           reply brief; preparing supporting declarations, and conferring with Nature's Bakery  
26           regarding the same;

- 1      • 31.8 hours billed by Andrea Hasegawa in researching and drafting the Motion for  
2      Sanctions;
- 3      • 3.3 hours billed by Andrew Levine for revising the motion and supporting declaration;
- 4      • 8.3 hours billed by Justin Bustos, Nature's Bakery's local counsel, for revising and  
5      supervising the filing of Nature's Bakery's Motion for Sanctions
- 6      • 2.3 hours billed by Cameron Baker, a BHB paralegal, for assisting in the filing of the  
7      motion for sanctions and reply briefs.
- 8      • 2.5 hours billed by Melinda K. Poehlman, a paralegal in local counsel's office, in  
9      connection with the motion for sanctions.

10 In total, Nature's Bakery incurred \$52,003.5 in fees in connection with its Motion to Sanctions.

11      **C. Fees Incurred Related to the Motion to Strike**

12      Nature's Bakery further seeks to recover 50% of the 34 efficient billable hours of attorney  
13 time and 0.2 hours of paralegal time it spent to prepare and file the Motion to Strike, which was  
14 necessitated by Plaintiff's submission of a declaration from its corporate representative after  
15 Plaintiff's refused to make a corporate witness available for deposition. While much of the Motion  
16 to Strike concerned Plaintiff's improper declaration and failure to make its witness available for  
17 deposition, Nature's Bakery only seeks 50% of its fees for preparing the motion. This is a  
18 conservative estimate of the attorney time spent preparing the portions of the motion addressing  
19 these issues. (Kwasniewski Decl. ¶ 2.) The 34 hours billed consists of:

- 20      • 29 hours billed by David Kwasniewski to research and draft the motion and reply  
21      brief; preparing supporting declarations and conferring with Nature's Bakery  
22      regarding the same;
- 23      • 3.5 hours billed by Andrew Levine to revise the draft motion and reply brief
- 24      • 1.5 hours billed by Eric Schlabs in for legal research regarding the motion to strike
- 25      • 3.0 hours billed by Justin Bustos, Nature's Bakery's local counsel, for revising and  
26      supervising the filing of Nature's Bakery's Motion for Strike

1 In total, Nature's Bakery incurred \$24,440.75 in fees in connection with its Motion to Strike. It  
2 also incurred \$604.51 in Westlaw fees in connection with this filing. Nature's Bakery seeks an  
3 award of 50% of these fees and costs, or \$12,220.38.

4 **D. Fees Incurred Related to the Sur-Reply**

5 Nature's Bakery further seeks to recover 25% of the 38.2 efficient billable hours of  
6 attorney time it spent to prepare and file the Sur-Reply, which was necessitated in part by  
7 Plaintiff's discovery misconduct. While much of the Sur-Reply concerned Plaintiff's improper  
8 reliance on its corporate representative's declaration and attorney argument which Nature's  
9 Bakery was unable to refuse without the benefit of Plaintiff's deposition, Nature's Bakery only  
10 seeks 25% of its fees for preparing the Sur-Reply. This is a conservative estimate of the attorney  
11 time spent preparing the portions of the Sur-Reply addressing these issues. (Kwasniewski Decl.  
12 ¶ 9-11.) The 38.2 hours billed consists of:

- 13 • 13.2 hours billed by David Kwasniewski to research and draft the sur-reply and confer  
14 with Nature's Bakery regarding the same;  
15 • 4.6 hours billed by Andrew Levine to revise the draft sur-reply;  
16 • 20.4 hours billed by Eric Schlabs for legal research and drafting of the sur-reply.

17 In total, Nature's Bakery incurred \$22,704.75 in fees in connection with its Sur-Reply. It also  
18 incurred \$763.88 in Westlaw fees in connection with this filing. Nature's Bakery seeks an award  
19 of 25% of these fees and costs, or \$5,867.16.

20 **E. Fees Incurred Related to this Fee Application**

21 Nature's Bakery further seeks to recover fees for the 4 billable hours of attorney time 1  
22 billable hour of attorney time it spent to prepare the instant fee application. This consists of

- 23 • 3 hours billed by David Kwasniewski to research and draft the application and  
24 supporting declaration;  
25 • 1 hour billed by Andrew Levine to revise the application;  
26 • 1.3 hours billed by Justin J. Bustos to revise and supervise the filing of the application.

- 1 hour billed by Cameron Baker, a BHB paralegal, to collect and organize supporting documents for the application.

In total, Nature's Bakery incurred \$3,571 in fees in connection with this application. Nature's Bakery reserves its right to supplement this application with the additional fees incurred in responding to any opposition to this application submitted by Plaintiff.

## CONCLUSION

For the foregoing reasons, Nature's Bakery respectfully requests that the Court award Nature's Bakery all attorney's fees and costs requested in this Application in full, in the amount of **\$73,662.03**.

DATED 12th day of November 2021

## DICKINSON WRIGHT PLLC

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*Attorneys for Defendant Nature's Bakery, LLC*

1                   **CERTIFICATE OF SERVICE**  
2

3                   I certify that I am an employee of DICKINSON WRIGHT, PLLC and that on this date,  
4 pursuant to Federal Rule of Civil Procedure 5(b), I am serving a true and correct copy of the  
5 attached **NATURE'S BAKERY'S APPLICATION FOR FEES PURSUANT TO ECF NO.**  
6 **104** on the parties through the Court's CM/ECF efiling system to the following:

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21                  DATED this 12th day of November, 2021.

22                  \_\_\_\_\_  
23                  /s/ *Caren M. Adkins*  
24                  An Employee of DICKINSON WRIGHT PLLC  
25  
26  
27  
28

## **EXHIBIT TABLE**

<b>Exhibit</b>	<b>Description</b>	<b>Pages<sup>1</sup></b>
1	Declaration of David Kwasniewski in Support of Nature's Bakery's Application Fees Pursuant to ECF No. 104	5
	Exhibit A - Excerpts of the Invoices Submitted to Nature's Bakery	22
2	Declaration of Justin J. Bustos in Support of Nature's Bakery's Application Fees Pursuant to ECF No. 104	3
	Exhibit A – Dickinson Wright PLLC's Redacted Invoices	6

<sup>1</sup> Exhibit Page counts are exclusive of exhibit slip sheets.